UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA
GREENSBORO DIVISION

SHELBY ROBERTS	)	
	)	Case 1:22-cv-01114-UA-LPA
Plaintiff,	)	
	)	RESPONSE AND BRIEF IN OPPOSITION TO
vs.	)	MOTION TO DISMISS
	)	
CARTER-YOUNG, INC.,	)	
	)	
Defendant	)	

NOW COMES Shelby Roberts, Plaintiff herein, and files this Response and Brief in Opposition to Motion to Dismiss filed by Defendant Carter-Young, Inc. The motion is meritless and should be denied.

NATURE OF MATTER

On December 20, 2022, Roberts filed this action alleging that Defendant violated the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681-1681x. Roberts alleged that Defendant violated its obligations under 15 U.S.C. §1681s-2(b), and that this Court had jurisdiction pursuant to 15 U.S.C. §§1681p and 28 U.S.C. §1331. [Doc. 1, Complaint, ¶ 5]. On February 21, 2023, Defendant timely filed a motion to dismiss pursuant to Rule 12(b)(6) and a supporting brief. [Doc. 3].

A Rule 12(b)(6) motion tests the sufficiency of the complaint. It is not a device to resolve disputed facts or the applicability of defenses. An affirmative defense may be reached on a motion to dismiss only if all facts necessary to resolve the defense are clearly apparent on the face of the complaint. *Goodman v. Praxair, Inc.,* 494 F.3d 458, 464 (4th Cir. 2007) (en banc). Although "detailed factual allegations" are not required, *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544, 555 (2007), the complaint must set forth "enough facts to state a claim to relief that is plausible on its face." *Id.* at 570. "A claim has facial plausibility when the pleader pleads factual content that

allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal,* 556 U.S. 662, 678 (2009).

STATEMENT OF MATERIAL FACTS

From November 2019 through January 10, 2021, Roberts resided in an apartment complex located in Arden, North Carolina ("Ansley"). Roberts and Ansley were parties to a written lease agreement. The initial term ran through September 10, 2020, but was extended for 60 days through November 10, 2020, at which point it became a month-to-month tenancy that could be terminated by either party with 30-days written notice. (Pars. 8-10).

Without notifying Roberts, Ansley agreed to lease her apartment to a third party, effective December 12, 2020. When Ansley belatedly notified Roberts she would have to vacate the apartment by December 12, Roberts asserted that Ansley's failure to give timely written notice had resulted in the lease being automatically extended through January 10, 2021. This forced Ansley to breach its agreement with the third-party, causing Ansley extreme embarrassment and potential financial liability. (Pars. 11-13).

After Roberts vacated the apartment, Ansley sought to charge Roberts for damages to the apartment that either never occurred, were ordinary wear and tear items, or were grossly overstated. In addition to retaining Roberts' $500 security deposit, Ansley sent Roberts an invoice in the amount of $791.14 for alleged damages not covered by the security deposit. The largest portion of this invoice (in excess of $500) was for the cost of a new stove, even though the only damage asserted was that the door handle to the oven had become detached. No claim was made that the stove itself had been damaged, and Ansley never replaced the stove. (Pars. 14-19).

Roberts refused to pay the $791.14 invoice, asserting that it was bogus, fraudulent, and retaliatory. Ansley then referred the claim to Defendant to engage in collection efforts. Carter-

Young has a longstanding business relationship with Ansley, which is financially remunerative to, and highly valued by, Defendant. (Pars. 20-23). Thereafter, Carter-Young sent Roberts a "Collection Notice," which Roberts disputed in writing, asserting that it was retaliatory and false.[1] Defendant then reported the Ansley claim to the three major CRAs as a valid, albeit "disputed," claim that was in collections. (Pars. 24-26).

In July/August 2022, Roberts' house in Knoxville, Tennessee was placed on the market for sale. Roberts was looking to rent an apartment in Roanoke, Virginia, where she intended to relocate. During this process, Roberts learned that the reporting of the Ansley claim would likely prevent her from being able to rent a residential apartment, as few, if any, apartment complexes will rent to a person who has a claim or collection matter with another apartment. (Pars. 27-29).

On August 2, 2022, Roberts filed a formal dispute with Experian, alleging that the Ansley claim was fraudulent and retaliatory. Experian promptly reported this dispute to Carter-Young. Roberts filed similar disputes with Equifax and TransUnion, which were also promptly reported to Defendant. Rather than conduct a reasonable investigation, Carter-Young merely requested its client to recertify the validity of the claim. Receiving such recertification, Defendant recertified the claim to the major CRAs on or about August 8, 2022. (Pars. 30-34).

Thereafter, on multiple occasions in August and September 2022, Roberts refiled formal disputes with the major CRAs, who again reported these disputes to Defendant. And on multiple occasions, without conducting any meaningful investigation, Carter-Young recertified the validity of the Ansley claim. (Pars. 35-36).

[1] This and all subsequent *written* communications with Carter-Young were from/to Roberts' attorney, who is her father and was a guarantor on the lease with Ansley. As all such communications were on behalf of Plaintiff Roberts, they are designated herein as from/to her.

In early to mid-September Roberts entered into a contract to sell her Knoxville house, with a closing date of October 12, 2022. Facing the prospect of being homeless on that date and unable to obtain relief from Defendant, Roberts filed a "small claims" lawsuit against Ansley in state court, raising claims under the North Carolina Debt Collection Practices Act. A hearing before a Magistrate was scheduled for October 7, 2022. Carter-Young was not a party to this suit. (Pars. 37-39).

On September 21, 2022, Roberts called Defendant directly and informed the manager of the lawsuit against Ansley. Carter-Young's manager expressed a willingness to further investigate. Later that day, Roberts sent Defendant an email, attaching a copy of the small claims lawsuit and describing Roberts' contention that the claim was fraudulent and retaliatory. On September 22, 2022, Defendant's manager responded: "We are in receipt of your email communication and have forwarded the same to our client for review." (Pars. 40-43).

On or about September 24, 2022, Roberts submitted a copy of the small claims lawsuit against Ansley to Experian, and Experian independently forwarded this information to Defendant. On September 26, 2022, Roberts sent Defendant's manager another email providing additional explanation and suggesting that the matter could be resolved with Carter-Young if it would temporarily block or delete the reporting of this claim pending resolution of the lawsuit against Ansley. (Pars. 44-45). On September 27, 2022, Carter-Young responded: "Are you willing to withdraw the suit?" That same day, Roberts responded (by email), pointing out that the dispute with Carter-Young was separate from the lawsuit against Ansley, Carter-Young was not a party to this lawsuit, and Carter-Young had independent FCRA obligations. Roberts questioned the reasonableness of Carter-Young's actions, invited it to submit any evidence it had to validate the

claim, and stated that if Carter-Young continued to act in lockstep with its client, Roberts would be forced to pursue litigation against Carter-Young under the FCRA. (Pars. 46-47).

Carter-Young never responded further, and on September 30, 2022, it again recertified the validity of the Ansley claim. On October 2, 2022, as a last-ditch effort, Roberts sent Defendant an initial draft of an FCRA complaint Roberts was prepared to file unless Defendant submitted persuasive evidence to validate the claim or blocked or deleted the reporting of the Ansley claim pending resolution of the small claims lawsuit. Carter-Young ignored this email. (Pars. 48-51).

On October 7, 2022, at a hearing before a Magistrate, Ansley and Roberts reached an oral settlement agreement (later reduced to writing) of Roberts' legal claims against Ansley. As part of this agreement, Ansley agreed to abandon its claim for damages and to instruct Carter-Young to report the Ansley claim as invalid and to delete it from Roberts' credit record. On October 7, 2022, acting solely at its client's direction, Carter-Young reported the Ansley claim as invalid and requested that it be deleted. (Pars. 52-55).

ROBERTS' LEGAL CLAIMS

Roberts alleges that she, as a consumer (15 U.S.C. § 1681a (c)), filed disputes with the major CRAs on multiple occasions in August and September 2022, along with substantial relevant information, and that these CRAs, as required by law, promptly notified Carter-Young of these disputes. These notifications triggered Carter-Young's obligation to conduct a reasonable investigation of the disputes (15 U.S.C. §1681s-2(b)(1)(A)) and, if any information is found to be inaccurate, incomplete, or incapable of being verified either modify, delete, or permanently block the reporting of that item of information. (15 U.S.C. §1681s-2(b)(1)(E)). Defendant made no effort to investigate the facts raised by Roberts and deferred exclusively to the desires of its client. It ignored the facial implausibility of the Ansley claim, sought to bargain on Ansley's behalf by

linking its willingness to honor its FCRA obligations to Roberts' willingness to drop her legal claims against Ansley, and recertified the Ansley claim even after it affirmatively knew the claim was false and unfounded, for the specific purpose of causing Roberts to compromise or dismiss her legal claims against Defendant's client. (Pars. 59-72, 74).

Roberts alleges that Defendant's conduct was willful, intentional, and knowing, or at least reckless. As a proximate result, Roberts suffered actual damages, including an extended inability to be approved for residential rental housing, increased out-of-pocket expenses and costs, damage to her reputation and credit, and emotional distress. 15 U.S.C. §1681n(a)(1). Roberts further sought to recover punitive damages (15 U.S.C. §1681n(a)(2)) and reasonable attorney fees (15 U.S.C. §1681n(a)(3)). (Pars. 73, 75-79). [2]

ARGUMENT

A. Roberts Easily Alleges All Essential Elements of Her FCRA Claims

"Congress enacted FCRA in 1970 out of concerns about abuses in the consumer reporting industry." *Dalton v. Capital Associated Industries,* 257 F.3d 409, 414 (4th Cir. 2001). "The legislative history of the FCRA indicates that its purpose is to protect an individual from inaccurate or arbitrary information about himself in a consumer report that is being used as a factor in determining the individual's eligibility for credit, insurance, or employment." *Pinner v. Schmidt,* 805 F.2d 1258, 1261 (5th Cir. 1986).

FCRA Section 1681s-2(b)(1) imposes legal obligations on furnishers of information such as Carter-Young that are enforceable in private actions under sections 1681n (willful violations) and 1681o (negligent violations). These obligations are triggered when a furnisher receives notice

[2] Alternatively, Roberts alleges that Carter-Young negligently violated its FCRA obligations. (Pars. 80-83).

from a CRA that a consumer has disputed "the completeness or accuracy of any information provided by" the furnisher to the CRA. As relevant here, following receipt of such notice, the furnisher "shall": "(A) conduct an investigation with respect to the disputed information" and "(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation . . . promptly— (i) modify that item of information; (ii) delete that item of information; or (iii) permanently block the reporting of that item of information."

The investigation obligation imposed on furnishers "requires some degree of careful inquiry by creditors." *Johnson v. MBNA America Bank, NA,* 357 F.3d 426, 430 (4th Cir. 2004). An "investigation" has been defined as a "detailed inquiry or systematic examination" and "a searching inquiry." *Id.* The "FCRA requires furnishers to determine whether the information they previously reported to a CRA is '*incomplete* or inaccurate.'" *Saunders v. BB&T Co. of Virginia,* 526 F.3d 142, 148 (4th Cir. 2008) (citing §1681s-2(b)(1)(D)) (emphasis supplied by court)). "In so mandating, Congress clearly intended furnishers to review reports not only for inaccuracies in the information reported but also for omissions that render the information misleading." *Id.* The reasonableness of a furnisher's investigation turns on "an evaluation of information within the furnisher's possession, such as correspondence between the consumer and the furnisher, the data identified by the reporting agency as disputed, and the furnisher's other records relating to the disputed account." *Daugherty v. Ocwen Loan Servicing, LLC,* 701 Fed. Appx. 246, 253 (4th Cir. 2017).

Under Section 1681s-2(B)(1)(E), there are "three potential ending points to reinvestigation: verification of accuracy, a determination of inaccuracy or incompleteness, or a determination that information 'cannot be verified.'" *Hinkle v. Midland Credit Mgmt., Inc.,* 827 F.3d 1295, 1302 (11th Cir. 2016). "When a furnisher reports that disputed information has been verified, the question of

whether the furnisher behaved reasonably will turn on whether the furnisher acquired sufficient evidence to support the conclusion that the information was true. This is a factual question, and it will normally be reserved for trial." *Id.* at 1303. Section 1681s-2(b)(1) "is designed not only to exclude false information from credit reports, but also to prevent the reporting of unverifiable information." *Id.* at 1304.

There are three essential elements to a Section 1681s-2(b)(1) claim: (1) the plaintiff submitted a dispute over the accuracy of information on a credit report to a CRA; (2) the CRA notified the furnisher of that dispute; (3) the furnisher failed to conduct a reasonable investigation to determine whether the disputed information can be verified. *Newman v. American Honda Finance Co.,* 2022 WL 657630, *3 (M.D. N.C. 2022); *Jones v. Aberdeen Proving Ground Federal Credit Union,* 2022 WL 1017094, *19 (D. Md. 2022); *McLaughlin v. Nationstar Mtg. LLC,* 2018 WL 4356754, *4 (M.D. N.C. 2018). Roberts' Complaint clearly and explicitly alleges (factually) each of these elements.

First, the Complaint alleges that Roberts initially filed a dispute with Experian on August 2, 2022. (¶ 30). She also filed disputes with Equifax and TransUnion. (¶31). Subsequently, "on multiple occasions in August and September 2022," she refiled formal disputes with the major CRAs. (¶35). [See also ¶ 63]. Thus, the first element of a section 1681s-2(b)(1) claim is clearly alleged.

Second, Roberts alleges that on each occasion that she filed a dispute, the CRA "promptly reported" the dispute to Defendant Carter-Young. (¶¶ 30, 31). "On each such occasion, the CRAs (upon information and belief and as required by 15 U.S.C. § 1681i(a)(2)) notified Defendant of Plaintiff's disputes and furnished Defendant with the details provided by Plaintiff." (¶64). The second element of a section 1681s-2(b)(1) claim is clearly alleged.

Third, Roberts alleged factually throughout the Complaint that Carter-Young "failed and refused to conduct a reasonable investigation of Plaintiff's disputes." (¶66). "Defendant engaged in a purely perfunctory and biased 'investigation,'" doing "nothing other than request[ing] its paying client Ansley to recertify the validity of the Ansley claim." (¶32). "Had Defendant engaged in even the most rudimentary investigation, it would have quickly discovered that the Ansley claim was on its face preposterous, fraudulent, and very likely retaliatory." (¶33). Even after Roberts submitted both directly and through the CRAs additional detailed factual allegations to support her dispute, Defendant merely forwarded the information "to [its] client for review." (¶42). Thereafter, it sought to link its willingness to act appropriately to Roberts "withdraw[ing]" her lawsuit against Ansley. (¶46). When Roberts declined, Defendant recertified the validity of the Ansley claim, (¶49), even though it had by that time "acquired sufficient information such that it affirmatively knew that the Ansley claim was false, fraudulent, and retaliatory." In doing so, Defendant relied "solely upon the position and interests of its client and consciously ignore[ed] all evidence contrary to its client's position." (¶50). Only after Ansley agreed as part of a settlement to report the claim as invalid and instructed Defendant to do so did Carter-Young eventually delete its reporting of the claim. (¶¶ 52, 53, 54, 55).

It is beyond question that Roberts adequately alleged that Carter-Young failed and refused to conduct a reasonable investigation and failed to delete or modify information it knew or should have known was false and/or incapable of being verified. Far less detailed allegations have been found sufficient to withstand a motion to dismiss. *E.g., Newman* (allegations that Honda "failed to conduct an investigation, failed to mark the account as disputed, and failed to correct the misleading reporting sufficient"); *Jones* at *19 (allegation that furnisher, after receiving notice of dispute from CRA, reported "inconsistent information" deemed sufficient to "survive a Rule

12(b)(6) motion"); *Doss v. Great Lakes Educational Loan Services, Inc.,* 2021 WL 1206800, *9 (E.D. Va. 2021) (allegation that defendant "conducted cursory reviews of [its] internal computer systems for credit reporting and regurgitated back to the ACDV system the inaccurate, derogatory credit reporting" sufficient "[a]t this procedural juncture.")

B. Defendant's "Legal Dispute" Defense Lacks Merit.

Defendant's brief does not question any of the foregoing analysis.[3] In fact, its argument is not that it actually conducted a reasonable investigation, but that it had no obligation to investigate anything at all because Roberts' disputes are properly classified as "legal disputes" rather than assertions of "factual inaccuracies." [Doc. 3, pp. 4-10]. Thus, Defendant attempts to pigeonhole the entire Complaint into a narrow legal principle that is more of an affirmative defense than it is an element of Plaintiff's legal claim.

Defendant's "legal dispute" defense fails for at least two reasons. First, controlling Fourth Circuit precedent, which Carter-Young conspicuously avoids citing, holds that the "legal dispute" defense *at most* applies to *CRAs* in claims arising under *Sections 1681e(b) and 1681i*. It does not apply to *furnishers of information* such as Carter-Young, who are being sued under *Section 1681s-2(b)*. Second, the defense, even if applicable in certain instances to furnishers, fails because the Complaint does not disclose on its face any material "legal dispute." To the contrary, the Complaint alleges that Roberts disputed the factual underpinning of the alleged debt; i.e., Ansley fabricated the "debt" out of thin air and the "damages" alleged by Ansley were either nonexistent or grossly overstated. Thus, the entire underlying premise of Defendant's motion is false.

[3] Defendant asserts cryptically that Roberts did not allege "that she paid all other sums that were due to Ansley" (Doc. 3, p. 3) or "that she made full payment of all lease obligations, such as rent or utilities." (P. 10). Defendant does not explain, and Plaintiff does not understand, the import of these assertions. They are not elements of a claim, and Ansley has never asserted that anything else was owing.

1. The "Legal Dispute" Defense Does Not Apply to Furnishers of Information.

In *Saunders, supra,* a consumer sued BB&T for failing to report his dispute of the alleged debt. BB&T argued "that furnishers need not report affirmative defenses raised by consumers," 526 F.3d at 149, citing "a handful of district court opinions which suggest that reporting a debt without reporting a dispute to the debt is *never* inaccurate as a matter of law." *Id.* at 150. The Fourth Circuit forcefully rejected BB&T's argument:

> To the extent these cases depend upon such reasoning, we find that position plainly inconsistent with the statutory text and longstanding precedent discussed above, including *Dalton. Moreover, all of these cases are distinguishable because they involved claims brought against CRAs under § 1681e(b) or § 1681i, while the case at hand involves a claim against a furnisher under § 1681s–2(b)(1). Claims brought against CRAs based on a legal dispute of an underlying debt raise concerns about "collateral attacks" because the creditor is not a party to the suit, while claims against furnishers such as BB & T do not raise this consideration because the furnisher is the creditor on the underlying debt.*

Id. (Emphasis added).

Other circuit courts have held the same. In *Gross v. CitiMortgage, Inc.,* 33 F.4th 1246 (9th Cir. 2022), the Ninth Circuit considered whether a furnisher of information violated FCRA by continuing to report a debt that had been effectively abolished by Arizona's Anti-Deficiency Statute. The court reversed the district court's grant of summary judgment in favor of the furnisher, explaining:

> This means that FCRA will sometimes require furnishers to investigate, and even to highlight or resolve, questions of legal significance. As the Consumer Financial Protection Bureau emphasized in its amicus brief, FCRA does not categorically exempt legal issues from the investigations that furnishers must conduct. The distinction between "legal" and "factual" issues is ambiguous, potentially unworkable, and could invite furnishers to "evade their investigation obligation by construing the relevant dispute as a 'legal' one."

Id. at 1253.

In *Wright v. Experian Information Services, Inc.,* 805 F.3d 1232 (10th Cir. 2015), the Tenth Circuit quoted with approval the Ninth Circuit's decision in *Carvalho v. Equifax Info. Servs., LLC,* 629 F.3d 876, 892 (9th Cir. 2010): "a consumer who disputes the legal validity of an obligation should do so directly at the furnisher level." *Id.* at 1244. Indeed, "[t]he FCRA expects consumers to dispute the validity of a debt with the furnisher of the information. . . ." *Id.*

The First Circuit's decision in *Chiang v. Verizon New England Inc.,* 595 F.3d 26, 35 (1st Cir. 2010), upon which Defendant primarily relies, has been criticized as inconsistent with "the prevailing interpretation of § 1681s-2(b)." *Hrebal v. Seterus, Inc.,* 598 B.R. 252, 269-270 (D. MN 2019). And it is patently contrary to controlling Fourth Circuit precedent.

Defendant ignores *Saunders,* but cites a handful of district court decisions, including a few within the Fourth Circuit, to support its contention that the "legal dispute" defense is equally applicable to furnishers. Insofar as these decisions are outside the Fourth Circuit, they are contrary to *Saunders* and entitled to no weight. The New Jersey district court's assertion that "[C]ourts have routinely held that furnishers are not required to investigate the legal validity of the underlying debts they report," *Esperance v. Diamond Resorts,* 2022 WL 1718039, *6 (D. N.J. 2022) is a gross overstatement and contrary to the majority view.

As for the few decisions within the Fourth Circuit that Defendant cites, none have been reviewed by the Fourth Circuit, and the only one that even acknowledged *Saunders* was *Perry v. Toyota Motor Credit Corp.,* 2019 WL 332813 (W.D. Va. 2019). There, the district court acknowledged that in *Saunders,* the Fourth Circuit held that "concerns about collateral attacks on the underlying debt are not present against furnishers because they are the creditor on the debt," but concluded that "it is still true that the FCRA is not meant as a route for debtors to challenge the legal validity of their debts, even against their creditors." *Id.* at *8. Because there was a disputed

and unsettled legal question regarding the impact of the Bankruptcy Code, it dismissed the allegation that Toyota violated the FCRA by failing to reference the bankruptcy discharge. However, Toyota's reporting of the account "as reaffirmed" was a factual question and this aspect of the plaintiff's claim was "sufficient to state a claim under §1681s-2(b)(1)(B) at the motion to dismiss stage." *Id.*

Three of the cited decisions within the Fourth Circuit involved suits against CRAs under statutory provisions other than Section 1681s-2(b)(1) and are distinguishable on that ground. *Jones v. City Plaza, LLC,* 2020 WL 2062325 (M.D. N. C. 2020); *Wilson v. Chrysler Capital, Inc.,* 2019 WL 12107374 (M.D. N.C. 2019); *Dauster v. Household Credit Services, Inc.,* 396 F. Supp.2d 663 (E.D. Va. 2005). And the latter decision was disavowed by the Fourth Circuit in *Saunders* as being inapplicable to furnishers. 526 F.3d at 150. The other two cited decisions from within the Fourth Circuit were before the court on motions for summary judgment rather than motions to dismiss and in neither case did the district court discuss *Saunders* on this particular issue. *Alston v. Wells Fargo Home Mtg.,* 2016 WL 816733, *10 (D. Md. 2016), (court observed that defendant had given plaintiff "the benefit of the doubt" on the "legal question whether [plaintiff's] cashier's check containing plaintiff's confusing and misleading annotations was a legally valid payment," and its discussion of *Chiang* seems unnecessary to its decision); *Shulman v. Lendmark Financial,* 2022 WL 16700301, *5 (D. S.C. 2022) (magistrate judge relied on nonbinding decisions "from outside the Fourth Circuit," yet wholly ignored binding decision in *Saunders* on this issue, even though court mentions *Saunders* in its discussion of willful violations, *Id.* at *6).

None of the cases cited by Defendant cogently explain why the Fourth Circuit's *Saunders* decision is not controlling.[4] Perhaps there are circumstances where the Fourth Circuit would recognize, *Saunders* notwithstanding, that the "dispute" was so "legal" in nature and so "unsettled" that a furnisher could not reasonably be expected to resolve the dispute. But that conclusion cannot be gainsaid, and the issue is not sufficiently teed up or ripe for this Court to address at this time. Even assuming, *arguendo,* that the defense might, in appropriate circumstances, be applicable to a furnisher, Plaintiff's Complaint simply does not clearly disclose any material "legal disputes" or "legal defenses." To the contrary, Plaintiff's Complaint alleges that Roberts challenged the entire factual underpinning of the Ansley claim.

2. Roberts Has Disputed the Factual Basis of the Ansley Claim. No "Legal" Dispute is Disclosed.

Defendant conveniently ignores the many factual issues highlighted by the Complaint and seizes on a few cherry-picked paragraphs in order to construct a very superficial argument. First, citing paragraphs 30, 35, and 44 of the Complaint, Defendant argues that "[t]he basis of her CRA disputes was that she was being retaliated against and the claims were fraudulent" and "[i]n order to investigate these disputes, Carter-Young would have to make legal conclusions that Ansley retaliated against Roberts or committed fraud." [Doc. 3, p. 8]. This is pure nonsense. Roberts has never contended this was a facially valid debt that could not be collected because it was legally "retaliatory." Rather, it was a "debt" that was manufactured out of thin air for retaliatory purposes. Ansley's retaliatory motive is not a *legal defense* to the debt. It is an *explanation* for why Ansley

[4] Perhaps Defendant may argue (in reply) that because Ansley, not Defendant, was the initial "creditor," *Saunders* is distinguishable. Any such contention, however, would ignore that the Complaint alleges that Defendant has a close financial relationship with Ansley, Ansley referred the debt to Defendant, and at every step it functioned as Ansley's puppet.

would falsify a debt. It makes it more plausible that Ansley would fabricate nonexistent "damages" than if there were no such motive. And it explains why Ansley would charge Roberts the cost of a new stove when the door handle could be (and was) reattached in minutes. Carter-Young was not being asked to make a legal judgment. It easily could have investigated with its own "client" whether *in fact* Roberts contested Ansley's attempt to lease the apartment prematurely, whether this caused Ansley embarrassment and financial harm, and whether the manager was angered enough to fabricate a nonexistent debt. *See Pinner, supra,* 805 F.2d at 1260, 1262 (retaliatory motive of manager relevant and required additional investigation in verifying alleged fictitious charges on credit account).[5]

Further, Ansley's motive was secondary to the ultimate factual dispute raised by Roberts, which was that the debt had no factual basis at all. On this question Roberts alleges throughout the Complaint that Defendant failed to conduct any sort of investigation, reasonable or otherwise. Rather, it "referred" the dispute to its client and parroted back its client's position to the CRAs. This hardly constitutes a searching and careful inquiry.

Similarly, Roberts' assertion that the Ansley claim was "fraudulent" did not raise a "legal" defense to an otherwise valid debt or ask Carter-Young to make any legal judgment. Fraud allegations are frequently raised and investigated in FCRA disputes. *E.g., Williams v. USAA Savings Bank,* 2022 WL 16951665, *3, 5, 9 (W.D. MO. 2022); *Romero v. Monterey Financial Services,* 2021 WL 268635 (S.D. Cal. 2021); *Wood v. Credit One Bank,* 277 F. Supp. 3d 821, 853 (E.D. Va. 2017). Further, Roberts was not asserting a legal "fraud" claim under North Carolina law. Rather, she was using the terms "fraud" and "fraudulent" as those terms are defined in

[5] Even when a plaintiff brings a retaliation claim based on a specific statute, the existence of "retaliation" is itself a "factual" question. *E.g., Smith v. UNC Health System,* 2022 WL 598687, *2 (M.D. N.C. 2022).

common usage. Merriam-Webster Online Dictionary defines "fraud" as "a: deceit, trickery," or "b: an act of deceiving or misrepresenting." [https: www.merriam-webster.com/dictionary/fraud, accessed on March 9, 2023]. Roberts alleged that the asserted debt was factually bogus. Underlying her contention that the Ansley claim was "fraudulent" were at least three specific factual contentions Carter-Young could have investigated. One, Roberts denied that the asserted damages actually occurred. This was purely a question of fact. Two, Roberts contended that even if *some* additional damages (exceeding $500 security deposit) occurred, these damages were grossly overstated. The dollar value of any damages was a purely factual question that could easily be investigated. Three, Roberts made a very specific contention that Ansley was seeking to charge her for the cost of a new stove (in excess of $500) when the only damage claimed was a detached door handle. Roberts asserted that this was preposterous on its face because (1) The handle attached by screws and could be reattached in less than 15 minutes; (2) The detached handle was an ordinary wear and tear item of the type that Ansley's maintenance department routinely repaired; (3) Roberts, consistent with expected practice, had reported the detached door handle to maintenance prior to vacating the apartment; (4) Ansley did not actually replace the stove. These facts were all subject to reasonable investigation and, if found to be true, would have required Defendant to delete, or at least substantially modify, its reporting of the Ansley claim.

Defendant further contends it had no obligation to investigate any defenses to the Ansley claim based on either North Carolina law or the written lease agreement between Roberts and Ansley. Defendant does not identify the specific disputed legal question(s) that only a court could resolve. Rather, it references two paragraphs of the Complaint. First, paragraph 39 alleges that Roberts filed a small claims lawsuit against Ansley "hop[ing] to invalidate through legal process the Ansley claim." Second, paragraph 16 alleges that under the terms of the lease and North

Carolina law, the detached oven handle was an ordinary wear and tear item that Ansley was obligated to fix. [Doc. 3, p. 8].

Roberts' lawsuit against Ansley "raise[ed] claims under the North Carolina Debt Collection Practices Act." Carter-Young was not a party to that lawsuit. (¶ 38). The lawsuit itself is not attached to the Complaint. However, the NCDCPA [N.C.G.S. Chapter 75-50 through 75-56] applies to persons who attempt to collect their own debts. It does not apply to entities such as Carter-Young who are engaged in collecting debts on behalf of third parties. N.C.G.S. §75-50(3). The NCDCPA does not provide any "legal defense" to a debt. Rather, it regulates the *conduct* of debt collectors (as defined) in attempting to collect debts, whether valid or invalid, and creates certain unfair and deceptive trade practices for which any aggrieved person is entitled to recover actual damages, civil penalties of between $500 and $4000 for each violation, and punitive damages. Roberts' state court lawsuit challenged Ansley's "conduct" in attempting to collect the alleged debt. Ansley is not a party to this federal lawsuit and its conduct in attempting to *collect* the debt is wholly irrelevant. *At no time has Roberts ever asked Carter-Young to determine whether Ansley violated the NCDCPA.*

As for Roberts' "hope" that the lawsuit might "invalidate" the Ansley claim and cause Carter-Young to delete its reporting of the claim, that "hope" does not alter the nature of the lawsuit or expand the remedies available in a small claim lawsuit.[6] Such lawsuits only permit recovery of monetary damages. They do not authorize declaratory relief. *See* N.C.G.S. §7A-210. In any event,

[6] A reasonable inference, to which Roberts is entitled at this stage, is that the small claims lawsuit against Ansley was her only "hope" of making anything happen before October 12, 2022, and that she "hoped," as eventually proved true, Ansley would compel Carter-Young to delete its reporting of the claim.

seeking to "invalidate" a claimed debt, even in a lawsuit, does not invariably raise a *legal* defense to the debt. A debt may be factually invalid, which is precisely what Roberts has always contended.

Regarding Roberts' assertion that under North Carolina law and the terms of the lease, Ansley was obligated to repair ordinary wear and tear items, Defendant argues: "Here, to determine if the lease covered the charges or were permitted under North Carolina law Carter-Young would have been required to make a legal determination as to the lease terms and applicability of state law." [Doc. 3, p. 9]. This is a puzzling assertion. No court, to Plaintiff's knowledge, has ever held that a CRA or a furnisher is entitled to be willfully ignorant of basic legal principles or of the terms of any legal documents upon which the alleged debt is based. The mere existence of relevant statutes and legal documents do not create a "legal dispute." If that were all there were to this defense, most disputes could be reclassified as "legal." Where this defense has been applied, the courts have identified specific legal questions that are actually disputed by the parties and in most cases highly unsettled. One would expect that in every dispute, the furnisher would need to consult the underlying legal document. In fact, there is an obligation to consult all relevant documents. *See Johnson, supra* (jury reasonably concluded that furnisher acted unreasonably based on its admission that "in investigating consumer disputes generally, they do not look beyond the information contained in the CIS and never consult underlying documents such as account applications.") 357 F.3d at 431.

There is nothing controversial about the contention that a landlord has an obligation to repair ordinary wear and tear items at its own expense. Defendant does not explicitly "dispute" this principle. And irrespective of state law, Roberts alleges that the lease so provided. [This too is a factual allegation that must be accepted at this stage.] Further, whether certain alleged damages

were "wear and tear" is a factual question that Defendant easily could have investigated. It is not a question of law.

Defendant's reliance on *City Plaza, supra,* is misplaced, as the facts and allegations in that case are a far cry from those presented here. There, the plaintiff admittedly breached his apartment lease by terminating it before its expiration. The apartment complex and its manager then charged the plaintiff for getting the apartment ready for a new tenant and for 6-days rent and retained the security deposit to cover some of the charges. The plaintiff disputed the debt solely on the ground that North Carolina law did not permit use of the security deposit for these purposes. After Online, a third-party collection service and an online specialty consumer reporting agency, reported the debt to the major CRAs, Jones filed a dispute with the CRAs, asserting that the debt "was bogus under North Carolina law." *Id.* at *1-2. Dissatisfied with the outcome, Jones sued all three entities under state law. He also sued Online under the FCRA, specifically 15 U.S.C. 1681j(a)(1)(A) and 15 U.S.C. 1681i, which apply only to CRAs and specialty consumer reporting agencies. Jones did not sue Online under 15 U.S.C. 1681s-2(b), as a furnisher of information.

Importantly, at no point did Jones allege that the "debt" was factually unfounded. As the court noted, he "does not appear to oppose the characterization of his claim as an attack on the legal validity of the debt, but instead argues that Online 'was still under an obligation to conduct a reasonable investigation' and yet 'did absolutely nothing.'" *Id.* at *4. Because Jones "challenges the legal validity of the debt, not its factual accuracy," the court concluded that his Section 1681i claim was an "impermissible collateral attack on the debt." As there was no factual inaccuracy in the report, any investigation by Online would not have uncovered any inaccuracy. *Id.* at *6. In reaching this conclusion, the court identified two specific legal questions on which the parties disagreed and on which there was no relevant North Carolina precedent whatsoever: (1) whether

a security deposit may be used for repainting and cleaning when a tenant breaches the lease and the landlord has a duty to mitigate damages and (2) "whether a landlord may apply a security deposit towards unpaid rent when it has not suffered actual damages from lost rent." *Id.* at *3.

The distinctions between this Complaint and the complaint in *City Plaza* are stark. Roberts has sued Carter-Young as a furnisher, not as a CRA. Roberts did not breach the lease. Roberts alleges that the "debt" was fabricated out of thin air and is factually inaccurate, not that it is bogus "under North Carolina law." Roberts has furnished numerous facts that could have been investigated by Defendant, and there are no specific legal questions that are unsettled or disputed that are relevant.

CONCLUSION

Plaintiff has plausibly alleged all essential elements of her FCRA legal claims. Plaintiff raises numerous factual challenges to the Ansley claim, all of which could have been investigated by Defendant. There are no material "legal disputes" apparent on the face of the Complaint, Defendant's "defense" to the Complaint is contrary to prevailing Fourth Circuit precedent, and it is an argument that is more appropriate for a motion for summary judgment if discovery should reveal some thorny legal question raised by Plaintiff's disputes.

Plaintiff requests that the motion to dismiss be denied.

Respectfully submitted, this 13th day of March 2023.

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CERTIFICATE OF WORD COUNT

Plaintiff's undersigned counsel of record certifies that this Brief complies with Local Rule 7.3(d)(1) as it contains 6,183 words, excluding parts exempted by Local Rule 7.3(d)(1).

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CERTIFICATE OF SERVICE

I hereby certify that on this date I electronically filed the foregoing Response and Brief in Opposition to Motion to Dismiss using the CM/ECF system which will automatically send email notification of such filing to the following attorney of record:

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